MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

September 5, 2006

CALL TO PODIUM:

Harold Belton

RESPONSIBLE STAFF:

Harold Belton, Director
Finance and Administration

AGENDA ITEM:
(please check one)

	Presentation
	Proclamation/Certificate
	Appointment
	Public Hearing
	Historic District
	Consent Item
	Ordinance
X	Resolution
X	Policy Discussion
	Work Session Discussion Item
	Other:

PUBLIC HEARING HISTORY:

(Please complete this section if agenda item is a public hearing)

Introduced	
Advertised	08/02/06
Hearing Date	08/21/06
Record Held Open	08/31/06
Policy Discussion	09/05/06

TITLE:

Resolution of the Mayor and City Council Authorizing the Issuance and Sale of Economic Development Revenue Bonds of the City of Gaithersburg for Asbury Methodist Village, Inc. and Asbury-Solomons, Inc. ($160,000,000).

SUPPORTING BACKGROUND:

On July 17, 2006, Asbury Methodist Village, Inc. and Asbury-Solomons, Inc. ("Asbury") formally requested that the City of Gaithersburg, in accordance with the Maryland Economic Development Revenue Bond Act, Md. Ann. Code (1957), Art. 41, sections 14-101 through 14-109, issue and sell bonds as its limited obligations and not upon its full faith and credit or pledge of its taxing power, and to loan the proceeds of the sale of such bonds to Asbury. The transaction would involve conduit debt only. The City of Gaithersburg incurs no liability as a result of transaction, and Asbury fully indemnifies the City for the life of the bonds.

The City previously issued bonds for Asbury Methodist Village, Inc. in 1993, 1997 and 2004 to finance its continuing care retirement facility in the City. The present bond issue is sought in order to refinance those bonds and bonds previously issued by Calvert County, Maryland for facilities owned by Asbury-Solomons, Inc. in Solomons, Maryland. The present bond issue will allow Asbury to consolidate all borrowing for its Maryland facilities into one loan.

A public hearing was held on August 21, 2006 with a presentation by Cheryl O'Donnell Guth, Esq., and a representative from Asbury. Following the presentation, Mr. Root, an Asbury resident, had comments and presented a letter to the Mayor and Council. The record closed on August 31, 2006. For your review, six additional comments have been received from the public and they are attached.

DESIRED OUTCOME:

Vote on Resolution

RESOLUTION NO.__________

RESOLUTION OF THE MAYOR AND CITY COUNCIL AUTHORIZING THE ISSUANCE AND SALE OF ECONOMIC DEVELOPMENT REVENUE BONDS OF THE CITY OF GAITHERSBURG FOR ASBURY METHODIST VILLAGE, INC. AND ASBURY-SOLOMONS, INC.

Whereas, Sections 14-101 through 14-109, inclusive, of Article 41 of the Annotated Code of Maryland, being the Maryland Economic Development Revenue Bond Act (the "Act") empowers any public body (as defined in the Act) to issue and sell bonds (as defined in the Act), as its limited obligations and not upon its faith and credit or pledge of its taxing power, at any time and from time to time, and to loan the proceeds of the sale of such bonds to one or more facility users (as defined in the Act) to finance or refinance any costs of the acquisition (as defined in the Act) of a facility or facilities (as defined in the Act) for one or more facility users (as defined in the Act); and

Whereas, the Act states the declared legislative purpose of the General Assembly of Maryland to be to (1) relieve conditions of unemployment in the State of Maryland (the "State"); (2) encourage the increase of industry and commerce and a balanced economy in the State; (3) assist in the retention of existing industry and commerce and in the attraction of new industry and commerce in the State through, among other things, port development and the control, reduction or abatement of pollution of the environment and the utilization and disposal of wastes; (4) promote economic development; (5) protect natural resources and encourage resource recovery; and (6) generally promote the health, welfare and safety of the residents of each of the counties and municipalities of the State; and

Whereas, the City of Gaithersburg (the "City") has received a letter from Asbury Methodist Village, Inc., a Maryland not-for-profit corporation and Asbury-Solomons, Inc., a Maryland not-for-profit corporation, each a facility applicant and facility user as defined in the Act (collectively, the "Facility Applicants"), dated July 17, 2006, a copy of which is attached hereto as Exhibit A and made a part hereof (the "Letter of Intent"), requesting the City to issue and sell its bonds pursuant to the Act and to loan the proceeds of the sale thereof to the Facility Applicants, for the purpose of refunding the outstanding principal amount of the following tax-exempt bonds previously issued by the City or County Commissioners of Calvert County, Maryland (the "County") and paying certain issuance: (i) City of Gaithersburg (Maryland) First Mortgage Economic Development Refunding Revenue Bonds (Asbury Methodist Homes, Incorporated Facility) Series 1993; (ii) City of Gaithersburg Economic Development Revenue Bonds (Asbury Methodist Village, Inc. Facilities) Series 1997 Variable Rate Demand/Fixed Rate Securities; (iii) Calvert County, Maryland Economic Development Refunding Revenue Bonds (Asbury-Solomons Island Facility) Series 1997; (iv) Calvert County, Maryland Variable Rate Demand/Fixed Rate Economic Development Revenue Bonds (Asbury-Solomons, Inc. Facility) Series 2001; and (v) City of Gaithersburg Variable

Rate Demand/Fixed Rate Economic Development Revenue Bonds (Asbury Methodist Village, Inc. Facilities) Series 2004 (collectively, the "Refunded Bonds"). The Facility Applicants acknowledge in the Letter of Intent that the City reserves certain rights concerning the issuance of the Bonds as provided in Section 5 of this Resolution; and

Whereas, the Refunded Bonds were issued to finance or refinance the acquisition (as defined in the Act) by the Facility Applicants of certain continuing care retirement facilities known as (1) "Asbury Methodist Village," a continuing care retirement community located on an approximately 130-acre campus located at 201 Russell Avenue, Gaithersburg, Montgomery County, Maryland 20877 and consisting of (i) 741 independent living apartments contained in six buildings, (ii) 74 independent living villas, (iii) 133 assisted living units contained in a single building, (iv) 285 comprehensive care beds contained in a single building, (v) the James F. Rosborough Jr. Cultural Arts and Wellness Center, (vi) administrative, dining, recreation and other support facilities, (vii) furniture, fixtures and equipment for such facilities and (viii) related improvements, including walkways, driveways, roads, parking facilities, storage buildings, landscaping and utilities (collectively, the "Asbury Methodist Village Facilities") and (2) "Asbury-Solomons Island," a continuing care retirement community located on approximately 58 acres of land at 11000 Asbury Circle, Solomons, Calvert County, Maryland 20688 and consisting of (i) 228 independent living apartments, (ii) 24 assisted living suites containing 30 beds, (iii) 72 independent living cottages, (iv) a community center, (v) a healthcare center containing 48 skilled and intermediate care nursing beds, (vi) administrative, dining, recreation and other support facilities, (vii) furniture, fixtures and equipment for such facilities and (viii) related improvements, including walkways, driveways, roads, parking facilities, storage buildings, landscaping and utilities (collectively, the "Asbury-Solomons Facilities" and, together with the Asbury Methodist Village Facilities, the "Facilities"); and

Whereas, a public hearing concerning the issuance of such bonds and the location and nature of the Facilities has been held following reasonable public notice (within the meaning of Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"); and

Whereas, the City, based upon the findings and determinations and subject to the reservation of certain rights as hereinafter set forth, has determined to issue and sell, in addition to any bonds authorized to be issued by any other act of the City, its bonds (within the meaning of the Act), at one time or from time to time, in an aggregate principal amount not to exceed One Hundred Sixty Million Dollars ($160,000,000), hereinafter designated "City of Gaithersburg Economic Development Refunding Revenue Bonds (Asbury Maryland Obligated Group Issue)" (the "Bonds"), and to loan the proceeds of the Bonds (the "Loan") to the Facility Applicants on the terms and conditions as hereinafter provided in order to refinance, in whole or in part, the costs of the acquisition by the Facility Applicants of the Facilities, to encourage economic development and to protect the health, welfare and safety of the citizens of the State, the County and the City.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Gaithersburg, that:

Section 1: Acting pursuant to the Act, it is hereby found and determined as follows:

(a) As evidenced by the Letter of Intent, a "letter of intent" within the meaning of the Act, the issuance of the Bonds pursuant to the Act by the City, a "public body" and a "municipality" within the meaning of the Act, in order to loan the proceeds to the Facility Applicants, each a "facility applicant" and a "facility user" within the meaning of the Act, for the sole and exclusive purpose of refinancing the "acquisition", within the meaning of the Act, of the Facilities, "facilities" within the meaning of the Act, for use by the Facility Applicants, will facilitate the refinancing of the Facilities by the Facility Applicants.

(b) The accomplishment of the transactions contemplated and authorized by this Resolution, including the refinancing of the costs of acquisition of the Facilities, will promote the declared legislative purposes of the Act by (i) creating and sustaining jobs and employment, thereby relieving conditions of unemployment in the City, the County and the State; (ii) encouraging the increase of industry and commerce and a balanced economy in the City, the County and the State; (iii) assisting in the retention of existing industry and commerce in the City, the County and the State; (iv) promoting economic development; and (v) generally promoting the health, welfare and safety of the residents of the City, the County and the State.

(c) Neither the Bonds, nor the interest thereon, shall ever constitute an indebtedness or a charge against the general credit or taxing powers of the City within the meaning of any constitutional or charter provision or statutory limitation and neither shall ever constitute or give rise to any pecuniary liability of the City. The Bonds and the interest thereon shall be limited obligations of the City, payable by the City solely from the revenues derived from Loan repayments (both principal and interest) made to the City by the Facility Applicants on account of the Loan and from any other moneys made available to the City for such purpose. No such moneys will be commingled with the City's funds or will be subject to the absolute control of the City, but will be subject only to such limited supervision and checks as are deemed necessary or desirable by the City to insure that the proceeds of the Bonds are used to accomplish the public purposes of the Act and this Resolution. The transactions authorized hereby do not constitute any physical public betterment or improvement or the acquisition of property for public use or the purchase of equipment for public use.

(d) The City Manager of the City (the "City Manager") is the chief executive officer of the City within the meaning of the Act and shall undertake on behalf of the City certain responsibilities described in the Act and hereinafter specified.

(e) The Bonds may be sold at either private (negotiated) sale or at public sale, and at, above or below par, in any event in such manner and upon such terms as the City Manager, in his sole and absolute discretion, deems to be in the best interests of the City.

(f) All or a portion of the Bonds may be issued as "qualified 501(c)(3) bonds" within the meaning of Section 145 of the Code.

Section 2: This Resolution is intended to be, and shall constitute, evidence of the present intent of the City to issue and deliver the Bonds authorized hereby in accordance with the terms and provisions hereof. Notwithstanding the foregoing, nothing in this Resolution shall be deemed to constitute (a) an undertaking by the City to expend any of its funds (other than the proceeds from the sale of the Bonds, revenues derived from the Loan repayments made to the City on account of the Loan, and any other moneys made available to the City for such purpose) to effect the transactions described herein or (b) an assurance by the City as to the availability of one or more ready, willing and able purchasers for the Bonds or as to the availability of one or more purchasers of the Bonds to whom the Bonds may lawfully be sold under, among others, applicable federal and state securities and legal investment laws.

Section 3: As described in the Letter of Intent, the City will not incur any liability, direct or indirect, or any cost, direct or indirect, in connection with the issuance and sale of the Bonds and the making of the Loan; accordingly, the Facility Applicants shall pay all costs incurred by or on behalf of the City in connection with the issuance and sale of the Bonds, the making of the Loan, including the administration thereof, including (without limitation) all costs incurred in connection with the development of the appropriate legal documents necessary to effectuate the proposed refinancing, including (without limitation) the fees of bond counsel, all costs in connection with publication of notices of any public hearings to be held in connection therewith, and compensation to any other person (other than full-time employees of the City) performing services by or on behalf of the City in connection with the transactions contemplated by this Resolution, whether or not the proposed refunding is consummated.

Section 4: In addition to any bonds authorized to be issued by any other act of the City, the issuance, sale and delivery by the City of the Bonds, at one time or from time to time, and in one or more series, in an aggregate principal amount not to exceed One Hundred Sixty Million Dollars ($160,000,000), are hereby authorized, subject to the provisions of the Act and this Resolution. The City will lend or otherwise make available the proceeds of the Bonds to the Facility Applicants, as permitted by the Act, pursuant to the terms and provisions of a loan agreement to be entered into between the City and the Facility Applicants (the "Loan Agreement"), to be used by the Facility Applicants for the sole and exclusive purpose of refunding the Refunded Bonds, funding a debt service reserve fund for the Bonds and paying certain costs of issuance of the Bonds and other related costs to the extent permitted by the Act and the Code. The Bonds and the interest thereon shall be limited obligations of the City, repayable by the City solely from the revenue derived from Loan repayments (principal and interest) made to the City by the Facility Applicants and from any other moneys made available to the City for such purpose. The maximum principal amount of Bonds which may be issued, sold and delivered pursuant to this Resolution is One Hundred Sixty Million Dollars ($160,000,000), unless such amount shall be increased by a resolution supplemental hereto.

Section 5: The City reserves the right, in its sole and absolute discretion, to take any actions which it may deem necessary in order to ensure that the City (a) complies with all federal and State laws, whether proposed or enacted, which may apply to or restrict the issuance of its economic development revenue bonds, and (b) issues such bonds to finance or refinance facilities which the City determines, in its sole and absolute discretion, will provide the greatest benefit to the City. Specifically, the City reserves the right to choose to issue its economic development revenue bonds to finance or refinance facilities other than the Facilities, and to issue or not to issue such bonds at such times and in the order of priority which the City Manager, in his sole and absolute discretion, may determine.

Section 6: The Bonds shall each be designated "City of Gaithersburg Economic Development Refunding Revenue Bonds (Asbury Maryland Obligated Group Issue)." The Bonds may be further identified by the year of issue and/or such other appropriate designations as the City Manager may approve.

The Bonds shall mature on such date or dates as may be approved by the City Manager; provided that the Bonds shall mature not later than 30 years from their date of issuance.

Each of the Bonds shall be executed in the name of the City and on its behalf by the manual or facsimile signature of the Mayor of the City. The seal of the City or a facsimile thereof shall be affixed to each of the Bonds, and attested by the manual or facsimile signature of the City Manager. If deemed appropriate by the City Manager, each of the Bonds may also be authenticated by the manual or facsimile signature of a trustee, registrar or paying agent. At least one of such signatures on each Bond shall be a manual signature.

Section 7: If deemed advisable by the City Manager, the City will enter into a trust agreement (the "Trust Agreement") for the protection of the holders of the Bonds with a bank having trust powers or a trust company (the "Trustee") to be approved by the City Manager and, pursuant to the Trust Agreement, the City will assign to the Trustee (among other things) (a) all of the City's right, title and interest in and to and remedies under the Loan Agreement, including (without limitation) any and all collateral referred to therein, excepting only the right of the City to indemnification by the Facility Applicants, taxes paid by the Facility Applicants to the City and to payments to the City for the City's administrative fees or expenses, if any, (b) the receipts and revenues of the City from the Loan, (c) certain monies which may be at any time or from time to time on deposit with the Trustee and (d) all of the City's right, title and interest in and to and remedies under such documents as the City Manager shall deem necessary or expedient to effectuate the issuance, sale and delivery of the Bonds.

Section 8: In connection with the transactions described herein, the City Manager is hereby authorized and empowered, by executive order or otherwise:

(a) To accept the Letter of Intent, in order to further evidence the present intent of the City to participate in the refunding of the Refunded Bonds to refinance the costs of the acquisition of the Facilities;

(b) To approve the form and provisions of, execute and deliver the Bonds, the Loan Agreement and the Trust Agreement;

(c) To approve the form and provisions of any Preliminary Official Statement, final Official Statement or other offering document with respect to the Bonds;

(d) If necessary, to appoint a trustee or trustees, a bond registrar and paying agent or agents for the Bonds;

(e) To provide for the direct payment by the Facility Applicants of all costs, fees and expenses incurred by or on behalf of the City in connection with the issuance, sale and delivery of the Bonds, including (without limitation) costs of printing (if any) and issuing the Bonds, legal expenses (including the fees of bond counsel) and compensation to any person (other than full-time employees of the City) performing services by or on behalf of the City in connection therewith; and

(f) To specify, prescribe, determine, provide for, approve, execute and deliver (where applicable) such other matters, details, forms, documents, or procedures, including (without limitation) bond purchase agreements, deeds of trust, assignments and financing statements, and such other documents as are necessary or appropriate to effectuate the authorization, sale, security, issuance, delivery or payment of or for the Bonds and the making of the Loan.

Section 9: The terms, provisions, form and substance of any and all documents and instruments to be executed or entered into by or for the benefit of the City in connection with the transactions authorized by this Resolution, including all customary closing certificates and documents, shall also be subject to the approval of the City Attorney or the City Attorney's designee prior to the execution and delivery thereof by the appropriate official of the City.

Section 10: In satisfaction of the requirements of Section 147(f) of the Code, the City hereby approves the Facilities and the Bonds.

Section 11: The members of the City Council, the Mayor, the City Attorney, and the Director of Finance of the City, for and on behalf of the City, are hereby authorized and empowered to do all things, execute all instruments, and otherwise take all such action as the City Manager may determine executive order or otherwise to be necessary, proper or expedient to carry out the authority conferred by this Resolution, including (without limitation) the execution of a certificate and/or agreement pursuant to Section 148 of the Code and the U.S. Treasury Regulations prescribed thereunder, subject to the limitations set forth in the Act and this Resolution.

Section 12: Unless previously exercised, the authority to issue the Bonds contained in this Resolution shall expire on the date which is one (1) year from the effective date of this Resolution, unless such authority shall have been extended by a resolution supplemental hereto.

Section 13: In accordance with the Act, this Resolution takes effect immediately upon its adoption.

Adopted by the Mayor and City Council this 5th day of September, 2006.

SIDNEY A. KATZ, MAYOR and
President of the Council

THIS IS TO CERTIFY that the foregoing Resolution was adopted by the Mayor and City Council, in public meeting assembled, on the 5th day of September, 2006.

David B. Humpton, City Manager

August 21, 2006

To: City of Gaithersburg Mayor and City Council

From: William A. Root, Chair, Asbury Methodist Village (AMV) Chapter of Maryland Continuing Care Residents Association (MaCCRA)
419 Russell Avenue #214, Gaithersburg MD 20877 tel. 301 987 6418
email waroot@aol.com

Subject: Public Hearing on Issuance of Asbury Refunding Bonds 8/21/2006

The Public Hearing notice and accompanying letter from Asbury contains no explanations as to why refunding would be either in the public interest or in the interest of AMV residents.

IRS questioning of the tax exempt status of Asbury Solomons bonds recently led to a costly settlement. MaCCRA/AMV wishes to avoid any action which might lead to a repetition of such questioning with respect to either AMV or Solomons bonds. MaCCRA/AMV also assumes that the City of Gaithersburg would wish to assure itself that the public interest served by the proposed refunding would be sufficient to avoid any such questioning.

Fees from AMV residents are the principal means to pay for the "costs of issuance," "other related costs," interest, derivative instruments permitting payment of interest at fixed rather than variable ratse, and principal, including any additional principal which may be associated with refunding the City of Gaithersburg 1993, 1997, and 2004 bonds. Pursuant to the Obligated Group under which AMV and Asbury Solomons guarantee each other's bonds, fees from AMV residents might also have to be used to pay similar costs of Calvert County 1997 and 2001 bonds.

If market interest rates had been declining in recent years, perhaps a case could be made that the costs of refunding would be offset by replacing high for low interest rates. However, market interest rates have been increasing because of Federal Reserve actions for several years. Another possible reason to refund would be to replace variable rate loans with fixed rate loans. However, Asbury has already invested in derivative instruments intended to permit payment of interest at fixed rather than variable rates.

External audits report that total bonded indebtedness of AMV and Solomons as of 12/31/2005 was $154.4 million of which $15.3 million was scheduled to mature in 2006. These figures suggest that about $20 million of the $160 million requested would be for costs related to the refunding. MaCCRA/AMV wishes to be shown how the savings from refunding would exceed the costs.

August 24, 2006,

To: City of Gaithersburg Mayor and City Council

cc: Peggy Crespi Kaplan, Secretary, Asbury Methodist Village, Inc.
Peggy Crespi Kaplan, Secretary, Asbury-Solomons, Inc.
David Denton, Executive Director and President, Asbury Methodist Village
Andrew Applegate, Executive Director, Asbury Solomons
Larry Bradshaw, Chief Financial Officer, Asbury Communities

From: William A. Root, Chair, Asbury Methodist Village (AMV) Chapter of Maryland Continuing Care Residents Association (MaCCRA)
419 Russell Avenue #214, Gaithersburg MD 20877 tel. 301 987 6418
email waroot@aol.com

Subject: Issuance of Asbury Refunding Bonds

This memorandum supplements my August 21 memorandum and August 21 oral testimony.

Our organization respectfully requests that you oppose the refunding of Asbury bonds. This refunding would not further the purpose described in the governing legislation, namely, the Maryland Economic Development Revenue Bond Act, Section 14-103(b), of Article 41 of the Annotated Code of Maryland. Refunding would not encourage economic development or the protection of natural resources, per 103(b)(1-5). Refunding simply refinances past economic activity. Refunding also would not promote the health, welfare, or safety of Gaithersburg residents, per 103(b)(6). On the contrary, it would hurt the welfare of Gaithersburg residents. The fees of AMV Gaithersburg residents would have to increase because of the numerous substantial costs involved in refunding and the absence of offsetting savings.

The merger of AMV bonds with those of Asbury Solomons (A-S) would appear to assist A-S at the expense of AMV. For example, it might lower AMV's future bond rating and raise Solomon's rating, because A-S is weaker financially than AMV. AMV now guarantees payment on A-S bonds under an Obligated Group. The proposed merger would promote AMV Gaithersburg from guarantor to primary obligee..

Why should the City of Gaithersburg become involved in a Calvert County activity?

On July 12, 2006, the Asbury Communities Chief Financial Officer assured AMV residents that "Asbury Solomons has no financial issues. They're receiving no subsidies from AMV or anybody else." If the refunding would not subsidize A-S, then the welfare of Calvert County residents as well as Gaithersburg residents would be hurt, rather than be promoted, because of refunding costs and lack of offsetting savings.

RECEIVED
AUG 28 2006
City of Gaithersburg
Finance & Administration

Shirley A. Wildman
401 Russell Ave. Apt. #703
Gaithersburg. Md. 20877-2818

AUG 28 2006

August 26, 2006

Distribution M&C: 09/05/06 TT HB✓

Mayor Sidney Katz,
Mayor of Gaithersburg
City Hall
Gaithersburg, Md.

Dear Mayor Katz,

I have been a resident of Asbury Methodist Village for over eight years (March, 1998). I listened to the Gaithersburg City Council Meeting on TV on Tuesday August 22, 2006, and am very concerned about the "Re-Funding of Asbury Bonds". I am not sure exactly what that means - I don't think it was explained during the program, however if this means that Asbury Services, (or Communities, Inc.) is asking for more money I hope you will deny their request.

As I said in the beginning I have been a resident here over eight years. During that time my monthly fee has risen 47% from $1096 to $1631. per month - my Social Security has risen approximately 10%.

I came to Asbury because I thought it was a Christian organization and I would be well taken care of for the rest of my life. I don't feel it has turned out that way. Since I came here the amenities have decreased. The dining room meals have deteriorated. We have two dining rooms, but they both have the same menu, where before Aramark came, each dining room had a different menu, so you had a choice. Also in addition to the increases in monthly fees all the other services have increased to the point where it is a struggle each month for me to make ends meet.

I wouldn't mind if this was necessary for my care,but I understand that Asbury Services borrowed 18 million dollars from Asbury Methodist Village to buy six other affiliates, all of which are losing money!! Also,I object to my money going to pay the CEO, Ed. Thomas a salary of over $500,000. per year. (see 990's-2004). This is twice as much as the <u>PRESIDENT OF THE UNITED STATES!!!!</u> I feel this is extravagant for a Non-profit organization.

I hope you will carefully consider their request with concern for the residents who will be the ones who will be paying these fees.

Sincerely,
Shirley A. Wildman
Shirley A. Wildman

P.S. Did you know Mary Ward has been transferred to the Wilson Health Care Center?

AUG 29 2006

August 29, 2006,

To: City of Gaithersburg Mayor and City Council

cc: Edwin Thomas, Chief Executive Officer, Asbury Communities
Peggy Crespi Kaplan, Secretary, Asbury Methodist Village, Inc.
Peggy Crespi Kaplan, Secretary, Asbury-Solomons, Inc.
David Denton, Executive Director and President, Asbury Methodist Village
Andrew Applegate, Executive Director, Asbury Solomons
Larry Bradshaw, Chief Financial Officer, Asbury Communities

From: William A. Root, Chair, Asbury Methodist Village (AMV) Chapter of Maryland Continuing Care Residents Association (MaCCRA)
419 Russell Avenue #214, Gaithersburg MD 20877 tel. 301 987 6418
email waroot@aol.com

Subject: Issuance of Asbury Refunding Bonds

This memorandum supplements my August 21 and August 24 memoranda and August 21 oral testimony to take into account the August 28 comments on this subject by Mr. Edwin Thomas at a meeting to which all AMV residents were invited. He said that refinancing would reduce interest rates from 5.5% to 5.25% and reduce annual bond fees by $200,000. He also said that resident fees were not expected to increase, there would be no change in the Obligated Group, and the transaction would be consistent with Maryland law. His arguments are not persuasive. We see no benefits and many disadvantages.

As of 12/31/05, interest rates on only $61.6 million were from 4.45% to 5.75%; rates on the remaining $93.8 million were 3.53% or 3.56%. Total interest paid in 2005 was $6.694 million. Interest at 5.25% of the $155.375 million outstanding on 12/31/05 would be $8.157 million, or $1.463 million higher than before the requested refunding. This additional interest cost far exceeds the anticipated $200,000 reduction in annual bond fees and would clearly require an increase in resident fees.

External audits of AMV and Asbury Solomons state that each member of the obligated group has the right to withdraw under "certain circumstances." Converting bonds now in the name of either AMV or Asbury Solomons into bonds in the name of the Obligated Group would bring into question whether that right could ever be exercised. It would also be contrary to assurances given to AMV residents when Asbury Solomons was established in 1994. Moreover, there is no Obligated Group organization. The merger of the bonds would lead to questions as to what organization is responsible for complying with bond requirements. This aspect of the request also casts doubt on the jurisdiction of the City of Gaithersburg.

A mere assertion that refunding would be consistent with Maryland law does not demonstrate in what manner it would further the purposes stated in the particular law governing this transaction.

We reiterate our opposition to the refunding and urge that you disapprove it.

August 31, 2006

To: City of Gaithersburg Mayor and City Council

cc: Edwin Thomas, Chief Executive Officer, Asbury Communities
Peggy Crespi Kaplan, Secretary, Asbury Methodist Village, Inc.
Peggy Crespi Kaplan, Secretary, Asbury-Solomons, Inc.
David Denton, Executive Director and President, Asbury Methodist Village
Andrew Applegate, Executive Director, Asbury Solomons
Larry Bradshaw, Chief Financial Officer, Asbury Communities

From: William A. Root, Chair, Asbury Methodist Village (AMV) Chapter of Maryland Continuing Care Residents Association (MaCCRA)
419 Russell Avenue #214, Gaithersburg MD 20877 tel. 301 987 6418
email waroot@aol.com

Subject: Issuance of Asbury Bonds

This memorandum supplements my August 21, August 24, and 29 memoranda and August 21 oral testimony to take into account the August 30 letter from Peggy Kaplan, AMV Secretary, and the August 29 letter from Cheryl Guth. We reiterate our opposition to Ms. Kaplan's July 17 request.

Ms. Kaplan's August 30 statement that some of the proceeds of the bonds would be used for new construction is at variance with her July 17 request that the City of Gaithersburg authorize bonds "for the purpose of refunding the outstanding principal amount of (listed) bonds." The public hearing on August 21 was to consider the July 17 refunding request, not to consider new construction. This is not a trivial matter. The requested $160 million is at least $20 million in excess of current outstanding principal.

Ms. Kaplan states. "In the future, MBIA could ... preclude AMV from providing a new service or program, or upgrade to its campus." There are, no doubt, sound insurance reasons for MBIA's reluctance to be involved in further AMV expansion. We and MBIA are not alone. Why else did Standard & Poor, in 2005, downgrade the Obligated Group outlook from stable to negative?

Ms. Kaplan states that MBIA "has made clear its interest in ending its participation in the AMV debt." It is unclear to us why it should be necessary to engage in costly refunding just to change the bond insurer.

Ms. Kaplan states, "The proposed structure ... may not result in an overall interest rate savings." She does not take issue with our calculation of increased annual interest costs of about $1.4 million. Her statement that "It is unlikely that the change in interest rate structure will result in either a decrease or an increase in the rates of the residents of AMV" is, therefore, a *non sequitur*.

Ms. Kaplan states that "the reissuance of debt ... will not alter the structure of the Obligated Group or the obligations of the Obligated Group members." However, she does not refute our observation that converting bonds now in the name of either AMV or Asbury Solomons into bonds in the name of the Obligated Group would bring into question whether AMV's existing right to withdraw from the Obligated Group under "certain circumstances" could be exercised when those circumstances are met. AMV needs to protect its flexibility to be able to withdraw from the Obligated Group under present criteria permitting this..

Ms. Guth, while being paid by Asbury, states that she is "ready and willing to render an opinion ... that (refunding existing bonds is) duly authorized ... in accordance with the (Maryland Economic Development Revenue) Act." The Act apparently permits refunding. However, it certainly does not require approval of refunding which would be detrimental to the interests of Gaithersburg residents and thereby be contrary to the only statement of purpose in the Act relevant to refunding.

We therefore urge you to disapprove the July 17 request because of:

- the questionable authority of the City of Gaithersburg to approve bonds for facilities in Calvert County;
- the omission from that request of the intent to use $20 million of the requested $160 million for new construction; and
- needless additional costs to be borne by Gaithersburg residents just for refunding existing debt.

Approval of this request may not cost the City of Gaithersburg anything. But it would cost each of 1,400 Gaithersburg residents perhaps as much as $1,000 per year into the indefinite future. This is an ominous development.

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August 29, 2006

Mayor and City Council of Gaithersburg
City Hall
31 South Summit Avenue
Gaithersburg, Maryland 20877

Mayor and Councilmembers:

This firm serves as the City's bond counsel in connection with the proposed issuance of economic development revenue bonds for the benefit of Asbury Methodist Village, Inc. and Asbury-Solomons, Inc.

The City held a public hearing with respect to the proposed issuance of these bonds on August 21, 2006. At the hearing, Mr. William Root testified in opposition to the bond issue. Mr. Root has also submitted written memoranda for inclusion in the public record.

In his memorandum dated August 24, 2006, Mr. Root states:

> This refunding would not further the purpose described in the governing legislation, namely, the Maryland Economic Development Revenue Bond Act, Section 14-103(b), of Article 41 of the Annotated Code of Maryland. Refunding would not encourage economic development or the protection of natural resources, per 103(b)(1-5). Refunding simply refinances past economic activity. Refunding also would not promote the health, welfare, or safety of Gaithersburg residents, per 103(b)(6). On the contrary, it would hurt the welfare of Gaithersburg residents.

As bond counsel in this transaction, I will render an opinion at the bond closing to the effect that the bonds have been duly authorized and issued in accordance with the Maryland Economic Development Revenue Act (the "Act"). Therefore, I believe that it is appropriate for me to respond to Mr. Root's comments on this topic.

The Act provides for the financing or refinancing of facilities that accomplish the purposes of the Act. When the original bonds were issued by the City of Gaithersburg and Calvert County, their respective governing bodies stated their findings in the respective authorizing resolutions that the facilities being financed would accomplish one or more of the purposes of the Act. Therefore, these refunding bonds also accomplish those purposes by refinancing the facilities originally constructed. No new economic development is required. Accordingly, under the existing facts surrounding the proposed issuance of bonds to refund the existing bonds previously issued to finance facilities for Asbury Methodist Village, Inc. and Asbury-Solomons, Inc., I will be ready and willing to render an opinion at closing that these bonds are duly authorized and issued in accordance with the Act.

Please contact me if you need any further information.

Sincerely,

Cheryl Guth

Cheryl O'Donnell Guth

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August 30, 2006

BY HAND DELIVERY

Mayor Sidney A. Katz,
Members of the City Council,
and David Humpton, City Manager
City Hall
31 S. Summit Avenue
Gaithersburg, MD 20877

Re: Asbury Refunding Tax-exempt Conduit Bonds

Dear Mayor Katz, Members of the City Council, and Mr. Humpton:

The following is in response to issues raised at the public TEFRA hearing held on August 21, 2006 and documents placed in the public record, regarding the Asbury Refunding Tax-exempt Conduit bonds. Prior to responding to the issues raised on the public record, however, it is important to note that the refunding bonds, have been approved by the Boards of Directors of Asbury Methodist Village, Inc., Asbury ~Solomons, Inc. and Asbury Communities, Inc., the Supporting Organization which provides management services, including financial planning and projections, and budget services to AMV and A~S. The members of all three of these Boards are volunteers who expend many hours of their time working to enable the current and future residents of AMV and the other communities in the Asbury system to live in a community which provides them with housing, health care and the knowledge that they will be eligible for benevolent care should they run out of funds. Asbury is proud that it has never asked a resident to leave the community because the individual was no longer able to pay for the services he or she received. The Asbury Directors are from a variety of backgrounds and professional disciplines. They care deeply about the experience of the residents and the future of the communities. They have spent considerable time discussing the need to issue refunding bond debt and believe that replacing the existing debt with refunding bond debt is in the long-term best interests of AMV and A~S.

Mr. William A. Root placed three documents in the record, one dated August 21, 2006, one dated August 24, 2006, and one dated August 29, 2006. In his August 21, 2006, submission, Mr. Root advised the City Council that a prior series of tax-exempt bonds, issued as conduit debt by Calvert County, Maryland on behalf of Asbury~Solomons, Inc. ("A~S"), had been subject to audit by the Internal Revenue Service, and questioned the economic justification for the refunding of the existing tax- exempt debt of Asbury Methodist Village, Inc. ("AMV"). In his August 24th submission, Mr. Root discusses The Economic Development Act ("Act") and the fact that the existing bonds are, and refunding bonds will be, an obligation of an Obligated Group, consisting of AMV and A~S. The relationship of the Obligated Group members is again touched upon in Mr. Root's August 29, 2006 submission, in which he also questions whether there are any interest rate savings inuring to the benefit of AMV from the refunding of the bonds. Each of Mr. Root's concerns is addressed below.

<u>The Internal Revenue Service Audit of the A~S Series 1997 Tax-exempt Bonds</u>

The fact that the A~S Series 1997 tax-exempt bonds were audited by the Internal Revenue Service ("IRS") has no bearing on the conduit bonds the Gaithersburg City Council is being asked to authorize. The bonds audited by the IRS contained a "Put Option." The Put Option affected the interest on the yield on the Refunding Escrow which, in the opinion of the IRS, created an arbitrage issue. The audit was settled and is closed. Neither the audit process nor the settlement with the IRS cost Calvert County or AMV any funds. No bondholders were affected by the audit. A~S paid only a portion of the settlement amount, with the balance of the settlement amount being paid by unrelated third parties.

<u>Reasons for Refunding the Existing Tax-exempt Debt of AMV</u>

Contrary to Mr. Root's assertion, the long-term tax-exempt interest rate environment remains favorable, notwithstanding the recent increases in short-term rates. As a result, the 1993 AMV bonds, which have a yield of just over 5.5%, will be replaced with fixed rate debt which is expected to have a yield of just under 5.25%. The 1997 AMV bonds, which are variable rate debt instruments and insured by MBIA, will be replaced by fixed long-term debt which is also expected to have an interest rate of just under 5.25%. The 1997 bonds are being replaced primarily due to the desire of MBIA to exit the senior living sector (see below). The issuance of the new bonds to replace the 1997 bonds will not result in interest savings, but will provide greater flexibility and will limit interest rate exposure through the change from variable to fixed rate debt. The 2004 AMV tax-exempt debt is also variable rate debt, and will most likely be replaced with similarly structured debt, however, the existing cost of the Letter of Credit fee will be reduced, which will result in interest rate savings. It is anticipated that any variable rate debt issues will have synthetic interest rate protection through an interest rate swap mechanism. The proposed structure, while reducing interest rates on some series of bonds, may not result in an overall interest rate savings, primarily due to the change in the 1997 bonds and the related issues with MBIA. It is unlikely that the change in interest rate structure will result in either a decrease or an increase in the rates of the residents of AMV.

As discussed below, there are reasons, in addition to the favorable long-term interest rate environment, to refund the existing AMV debt at this time. These reasons include, but are not limited to, the following:

- The 1997 AMV debt is insured by MBIA. MBIA is no longer in the business of insuring debt of continuing care retirement communities ("CCRCs") such as

AMV, and has made clear its interest in ending its participation in the AMV debt (the only, or one of a remaining few, long-term care, CCRC debt issues to which MBIA remains a party). MBIA has become increasingly difficult to work with over the past several years, as it has removed itself from the long-term care industry. In the future, MBIA could, out of lack of knowledge and familiarity with CCRCs and long-term care, prevent AMV from taking action which is important to its strategic plans, or would preclude AMV from providing a new service or program, or upgrade to its campus. Therefore, it is important that the bonds which are enhanced by MBIA insurance be replaced. In the proposed refunding, the AMV bonds enhanced by MBIA insurance would be replaced by bonds, some of which would be enhanced by a Letter of Credit ("LOC") from a banking institution which regularly provides credit support to CCRCs, and some of which will be un-enhanced debt.

- By combining the 1993, 1997, and 2004 series tax-exempt bond debt, AMV will obtain more favorable terms and conditions from the LOC banks. For example, the ability to restructure the debt with the LOC banks for this bond issue will result in an initial decrease of 87.5 basis points for the Letter of Credit Fee, compared to the 2004 bond issue, with the potential for an additional savings of 37.5 basis points. It is anticipated that on the existing outstanding 2004 bonds, the initial annual savings for 2007 will amount to $212,625.
- Part of the refunding transaction will be the execution of a new Master Trust Indenture. The Trust Indenture that will be replaced has been in existence since 1990 and is out dated and cumbersome. The new MTI will provide the organization with greater flexibility and will be in keeping with current norms.

It is important for AMV to maintain the financial flexibility that the refunding transaction will provide. The AMV Strategic and Master Plans recognize the need to revitalize portions of the AMV campus by, for example (i) combining smaller apartments in the older apartment buildings to create large units with upgraded amenities; attractive to today's elderly, (ii) creating more private rooms in the Wilson Health Care Center, and (iii) creating more low density residential living opportunities on the campus through new construction. The current refinancing transaction is a necessary step; a building block, to the future and the continued vibrancy of the AMV campus, and the lifestyle enjoyed by the almost 1,400 individuals who currently reside on the campus, as well as the pleasant work environment shared by the over 700 individuals employed on the campus.

<u>The Economic Development Act</u>

AMV is a vibrant campus in Gaithersburg providing quality jobs, at a variety of skill levels and areas of expertise, to residents of the City. Contrary to Mr. Root's assertion, the Act permits the financing and refinancing of projects. In the instant case, the refunding bonds are being used to replace bonds previously issued pursuant to the Act and are, therefore, a permitted use of conduit financing by the City. In addition, as set forth above, these bonds will enable AMV to prepare today for future growth tomorrow.

The Act permits one government entity to serve as a conduit issuer for bonds throughout the state, so long as doing so encourages economic development in its geographic area. Because AMV and A~S have an Obligated Group for their tax-exempt debt, it is in the best economic interest of the City of Gaithersburg for A~S to be as economically vibrant as AMV. The refunding of the A~S debt will serve much of the same purposes for A~S as the refunding of the AMV debt will serve for AMV. The use of one conduit agent for the bonds for the entire Obligated Group will save significant cost in the refunding process. The City of Gaithersburg serving as the conduit issuer for both the AMV and A~S bonds demonstrates an understanding on the part of the City of Gaithersburg of both the Act and the fact that AMV is part of an Obligated Group with A~S.

<u>The AMV and A~S Obligated Group</u>

AMV and A~S are, and have been since 1997, an existing Obligated Group for their tax-exempt bond debt. The proposed refunding bonds do not alter, expand or mitigate the liability AMV and A~S may have for the bond debt of the other. Neither member of the Obligated Group subsidizes the bond debt of the other member. However, the geographic diversity, as well as the varying strengths of the two communities, make the combined communities a stronger credit which is able to negotiate better terms than either community alone could obtain. Mr. Root's statements that "AMV now guarantees payment on A~S bonds under an Obligated Group[.] The proposed merger would promote AMV Gaithersburg from guarantor to primary obligee[.]" are simply incorrect. The proposed refinancing bonds do not create a merger, and, as previously stated, in no way alter the obligation of AMV for the A~S bond debt or A~S for the AMV bond debt.

As set forth above, the re-issuance of debt will enable AMV to move forward with its strategic and long-term goals, will take advantage of the favorable long-term debt environment and improve the terms of the financing, but will not alter the structure of the Obligated Group or the obligations of the Obligated Group members.

Another document was entered on the record on August 28, 2006. This document contains multiple errors of fact and does not address the core issue of the City of Gaithersburg serving as a conduit issuer for the refinancing bonds of the AMV–A~S Obligated Group. Nevertheless, in order to correct the record, it is important that we state unequivocally that neither Asbury Communities, Inc. nor Asbury Services, Inc. has borrowed $18 million from AMV, has purchased six other affiliates, nor pays the President/CEO of the company twice as much as the President of the United States.

Should you have any questions, or require any additional information, please let us know. I can be reached by phone at (301)216-4270.

Sincerely,

Peggy Crespi Kaplan

Peggy Crespi Kaplan, Esq.
Secretary, Asbury Methodist Village, Inc.